



May 18, 2001

Ms. Anne M. Constantine
Legal Counsel
Dallas/Fort Worth International Airport
P.O. Drawer 619428
DFW Airport, Texas 75261-9428

OR2001-2033A

Dear Ms. Constantine:

This office issued Open Records Letter No. 2001-2033 on May 16, 2001. However, that decision contained an incorrect statement and decision concerning the proprietary information of DaimlerChrysler Rail System (North America), Inc. d/b/a Adtranz Automated Transit Systems ("Adtranz"). Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on May 16, 2001.

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147266.

The Dallas-Fort Worth International Airport Board (the "board") received a request for copies of the "Automated People Mover System Supplier and Operations and Management Project contracts numbered 8500113 and 8500114 and any schedules or attachments thereto." You state you have released to the requestor the information subject to Open Records Letter No. 2001-0601 (2001),¹ but that additional information concerning contract number 8500113 is now being submitted that may also include information responsive to the requestor's prior request dated February 2, 2001, regarding bid proposal information. You claim portions of

¹ See Open Records Letter No. 2001-0601 (2001) (board must release contract number 8500113, which incorporates by reference volumes 1 through 4, respectively titled "General Provisions," "Additional Site Provisions," "Special Provisions," and "Technical Provisions," and contract number 8500114).

the submitted documents including proposal and pricing information are excepted from required disclosure under section 552.110 of the Government Code. You make no arguments for withholding the remaining submitted information. You state you have notified Adtranz of the request in accordance with section 552.305 of the Government Code. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

We note that you have not submitted for our review contract number 8500114. You state that in a previous letter ruling you were required to release contract number 8500114 because it had not been submitted to our office for review.² You now explain this document was not previously submitted for our review because at the time of that request, November 27, 2000, the contract did not exist even in draft form, and therefore, it was not subject to the Public Information Act. We note that the Public Information Act (the "Act") compels disclosure of public information that is in existence, but it does not require a government entity to prepare or assemble new information in response to a request. *See* Gov't Code § 552.002 (defining "public information" as that "collected, assembled, or maintained " by a government body); *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 268 (Tex. Civ. App. – San Antonio 1978, writ dismissed) (ruling that a government agency could not be required to make copies of documents no longer in its possession). In your March 9, 2001 brief, you further explain that "[a]t this time a draft document does exist and [you] will send it to [our] office for review should [you] receive a subsequent request" for it. From this statement, it cannot be determined whether "at this time" refers to the date of the present request, February 22, 2001, or March 9, 2001, the date of your brief. If contract number 8500114 was in existence as of the date of the present request, you must release it to the requestor at this time because you have not submitted it to this office for review. *See* Gov't Code §§ 552.301(a), .302. If the contract did not exist as of February 22, 2001, the date of the present request, then the board need not release it.

Next, you state portions of the submitted documents include proposal and pricing information that Adtranz believes may be proprietary and not subject to public disclosure under section 552.110 of the Government Code. In addition, you explain that forcing the board to release the proprietary information of its contractors will have a chilling effect on procurements in the future. You state you have notified Adtranz of the request by copy of your letter dated March 9, 2001. This office has received comments from Adtranz asserting that the information is excepted from public disclosure under section 552.110 of the Government Code. Counsel for Adtranz informed this office that the proposal and pricing

² *See* Open Records Letter No. 2001-0601 (February 16, 2001).

information at issue here is the same, precise information addressed in Open Records Letter No. 2001-1589 (2001). Thus, the board may rely on that letter ruling as a previous determination regarding Adtranz's proprietary information. We further note that the remainder of the information submitted for our review has been previously addressed in Open Records Letter Nos. 2001-1589 (2001) and 2000-4716 (2000). To the extent that the submitted information is precisely the same information that was addressed in those letter rulings, the board may rely on those letter rulings as previous determinations regarding the submitted information. *See* Open Records Decision No. 673 (2001) (previous determination exists where requested information is precisely same information addressed in prior attorney general ruling, ruling is addressed to same governmental body, ruling concludes that information is or is not excepted from disclosure, and law, fact, and circumstances on which ruling was based have not changed).

In summary, if contract number 8500114 was in existence as of February 22, 2001, you must release it to the requestor. To the extent that the submitted information is precisely the same information that was addressed in Open Records Letter Nos. 2001-1589 and 2000-4716, the board may rely on those letter rulings as previous determinations regarding the submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839.

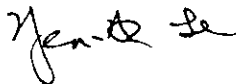
The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DBF/seg

Ref: ID# 147266

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